

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

TRAVIS LEE HESS,

Defendant/Movant.

CR 10-87-GF-BMM

CV 16-64-GF-BMM

ORDER

This matter comes before the Court on Defendant/Movant Hess's motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255.

Hess has filed an unopposed motion to dismiss the § 2255 motion with prejudice. He explains that the United States does not oppose the motion, so long as dismissal is made with prejudice. *See* Mot. to Dismiss (Doc. 485) at 2.

Under Fed. R. Civ. P. 41(a)(2), "an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper." It is not clear whether the United States's agreement to a dismissal with prejudice preserves or waives its right to assert any § 2255 motion filed in the future must meet the restrictions of 28 U.S.C. § 2255(h). The parties' agreement to dismissal with prejudice indicates, however, they believe the issue should not be resolved at this time.

The parties' terms are proper. No decision is made either on the merits of

the § 2255 motion or on the second or successive issue at this time. The § 2255 motion will be dismissed with prejudice.

A certificate of appealability is not warranted. Because the sentencing guidelines are not subject to challenge on grounds of vagueness, *see Beckles v. United States*, __ U.S. __, 137 S. Ct. 886 (2017), Hess has not made a substantial showing that he was deprived of a constitutional right. 28 U.S.C. § 2253(c)(2).

Accordingly, IT IS HEREBY ORDERED:

1. Hess's motion to dismiss his pending § 2255 motion with prejudice (Doc. 485) is GRANTED.
2. Hess's § 2255 motion (Doc. 477) is DISMISSED WITH PREJUDICE.
3. A certificate of appealability is DENIED. The Clerk of Court shall immediately process the appeal if Hess files a Notice of Appeal;
4. The Clerk of Court shall ensure that all pending motions in this case and in CV 16-64-GF-BMM are terminated and shall close the civil file by entering judgment of dismissal with prejudice.

DATED this 6th day of April, 2017.

A handwritten signature in blue ink, reading "Brian Morris".

Brian Morris
United States District Court Judge